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BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation of	)	File No.: 100-2580
THE CALIFORNIA CORPORATIONS	)	
COMMISSIONER,	)	<b>ORDER REVOKING CALIFORNIA</b>
	)	<b>DEFERRED DEPOSIT TRANSACTION</b>
Complainant,	)	<b>LICENSE PURSUANT TO FINANCIAL</b>
vs.	)	<b>CODE SECTION 23052</b>
	)	
PAYDAY ADVANCE EXPRESS, INC.,	)	
	)	
Respondent.	)	
	)	
	)	

The California Corporations Commissioner (“Commissioner”) finds that:

The Commissioner of the Department of Corporations (“Department”) issued to Respondent Payday Advance Express, Inc. (“Respondent”) a deferred deposit transaction originator license pursuant to the California Deferred Deposit Transaction Law (“CDDTL”), Cal. Fin. Code §§ 23000 *et seq.* Compliance with the CDDTL is essential to retain a deferred deposit transaction originator license. At all times Respondent was required to comply with all law and regulations enacted under this law, but failed to do so.

1 Respondent conducted business at 338 West Lexington Avenue, Suite 214B, El Cajon,  
2 California 92020. Respondent's owners are Ajit Ahooja and Daniel Leavitt.

3 Since at least September 2005, Respondent has engaged in the business of deferred  
4 deposit transactions by offering, originating and making deferred deposit transactions, which is a  
5 written transaction whereby one person gives funds to another person upon receipt of a personal  
6 check and it is agreed that the personal check shall not be deposited until a later date. These  
7 transactions are sometimes referred to as "payday advances" or "payday loans."

8 In April 2005, Respondent filed with the Department an application for a license to make  
9 deferred deposit transactions and included a Declaration designated as "Exhibit K" to the  
10 application and signed under penalty of perjury by Daniel Leavitt, stating:

11 I (we) have obtained and read copies of the California Deferred Deposit Transaction  
12 Law (Division 10 of the California Financial Code) and the Rules (Chapter 3, Title,  
10, California Code of Regulations) and am familiar with their content: and,

13 I (we) agree to comply with all the provision[s] of the California Deferred Deposit  
14 Transaction Law, including any rules or orders of the Commissioner of Corporations.

15 As a part of the application process Respondent was required to and did complete another  
16 Declaration designated as "Exhibit L" to the application, which Daniel Leavitt signed under penalty  
17 of perjury, stating:

18 The applicant will comply with all federal and state laws and regulations (including  
19 Division 10, commencing with Section 23000, of the Financial Code), if it offers,  
20 arranges, acts as an agent for, or assists a deferred deposit originator in the making of  
a deferred deposit transaction (Financial Code Section 23037(i).)

21 On September 27, 2005, a letter accompanied the Commissioner's issuance of a CDDTL  
22 license to Respondent, which in part informed Respondent of the following:

23 [T]here are certain obligations and responsibilities that a licensee must comply with.  
24 The following information about a licensee's obligations and responsibilities  
25 regarding certain requirements of the California Deferred Deposit Transaction Law is  
26 provided for your reference.... [A] licensee should review and become familiar with  
all provisions of the law and rules and regulations.

26 ...

27 5. A licensee is subject to statutory books and records requirements . . .  
28 (Section 23024.)

1 Notwithstanding knowledge regarding the licensure requirements, Respondent willfully  
2 and knowingly engaged in violations of the CDDTL.

3 The CDDTL and the California Code of Regulations provide:

- 4 (1) The CDDTL license “shall be conspicuously posted in the place of business  
5 authorized by the licensee.” Fin. Code § 23018(a).
- 6 (2) The licensee may not do business under any name other than the one shown on the  
7 license. Fin. Code § 23023.
- 8 (3) Advertisements must disclose that the licensee is licensed by the Department of  
9 Corporations. Fin. Code § 23027(b).
- 10 (4) Before entering into a deferred deposit transaction, licensees must distribute to  
11 customers a notice that includes the following:
- 12 1. Information about charges for deferred deposit transactions.
- 13 2. That if the customer’s check is returned unpaid, the customer may be  
14 charged an additional fee of up to fifteen dollars (\$15).
- 15 3. That the customer cannot be prosecuted in a criminal action in conjunction  
16 with a deferred deposit transaction for a returned check or be threatened with  
17 prosecution.
- 18 4. The department’s toll-free telephone number for receiving calls regarding  
19 customer complaints and concerns.
- 20 5. That the licensee may not accept any collateral in conjunction with a  
21 deferred deposit transaction.
- 22 6. That the check is being negotiated as part of a deferred deposit transaction  
23 made pursuant to Section 23035 of the Financial Code and is not subject to  
24 the provisions of Section 1719 of the Civil Code. No customer may be  
25 required to pay treble damages if this check does not clear.
- 26 Fin. Code § 23035(c).
- 27 (5) The following notices shall be clearly and conspicuously posted in the  
28 unobstructed view of the public by all licensees in each location of a business

providing deferred deposit transactions in letters not less than one-half inch in height:

1. The licensee cannot use the criminal process against a consumer to collect any deferred deposit transaction.
2. The schedule of all charges and fees to be charged on those deferred deposit transactions with an example of all charges and fees that would be charged on at least a one-hundred-dollar (\$100) and a two-hundred-dollar (\$200) deferred deposit transaction, payable in 14 days and 30 days, respectively, giving the corresponding annual percentage rate....

Fin. Code § 23035(d).

- (6) An agreement to enter into a deferred deposit transaction shall be in writing and shall be provided by the licensee to the customer. The written agreement shall authorize the licensee to defer deposit of the personal check, shall be signed by the customer, and shall include all of the following:

1. A full disclosure of the total amount of any fees charged for the deferred deposit transaction, expressed both in United States currency and as an APR as required under the Federal Truth In Lending Act and its regulations.
2. A clear description of the customer's payment obligations as required under the Federal Truth In Lending Act and its regulations.
3. The name, address, and telephone number of the licensee.
4. The customer's name and address.
5. The date to which deposit of the check has been deferred (due date).
6. The payment plan, or extension, if applicable as allowed under subdivision (c) of Section 23036.
7. An itemization of the amount financed as required under the Federal Truth In Lending Act and its regulations.
8. Disclosure of any returned check charges.
9. That the customer cannot be prosecuted or threatened with prosecution to

collect.

10. That the licensee cannot accept collateral in connection with the transaction.

11. That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service.

Fin. Code § 23035(e).

(7) The licensee may extend the time for repayment of an existing deferred deposit transaction, but is prohibited from charging extension fees in connection therewith.

Fin. Code § 23036(b).

(8) A licensee is may not:

(a) Accept or use the same check for a subsequent transaction, or permit a customer to pay off all or a portion of one deferred deposit transaction with the proceeds of another.

...

(e) Alter the date or any other information on a check.

(f) Engage in any unfair, unlawful, or deceptive conduct, or make any statement that is likely to mislead in connection with the business of deferred deposit transactions.

(g) Accept more than one check for a single deferred deposit transaction.

(h) Take any check, instrument, or form in which blanks are left to be filled in after execution.

Fin. Code § 23037.

(9) In any transaction with active military personnel, a licensee may not charge an APR higher than 36 percent. Fin. Code § 23038(a).

(10) The licensee must maintain certain records of every transaction, including evidence of the check, at the business location. C.C.R. tit. 10, § 2025(c)(1).

On or about September 18, 2007, after having given Respondent advance notice, the Commissioner commenced a regulatory examination of the books and records of Respondent. The Commissioner's examination revealed that while engaged in the business of deferred deposit

1 transactions, Respondent violated provisions of the California Financial Code and the California  
2 Code of Regulations as more fully described below:

- 3 (1) Failed to conspicuously post the license in the licensed place of business in  
4 violation of Financial Code section 23018, subd. (a).
- 5 (2) Used unauthorized names, including “PaydayAdvanceExpress.com,” “MBA  
6 Enterprises, Inc.,” and “Payday Advance” on the Disclosure Statement and a  
7 customer check in violation of Financial Code section 23023.
- 8 (3) Placed an online advertisement in the San Diego Yellow Pages that failed to  
9 disclose that the licensee was licensed by the Department of Corporations, as  
10 required by Financial Code section 23027(b).
- 11 (4) Failed to distribute a written notice to the customer before entering into a  
12 deferred deposit transaction as required by Financial Code section 23035(c).  
13 A notice is incorporated into the parties’ written agreement, but fails to  
14 disclose:
  - 15 a. Information about charges for deferred deposit transactions (§  
16 23035(c)(1));
  - 17 b. That the customer may be charged up to \$15 for a returned check (§  
18 23035(c)(2));
  - 19 c. That a customer cannot be prosecuted or threatened with criminal  
20 prosecution for a returned check (§ 23035(c)(3));
  - 21 d. The Department’s toll-free telephone number for receiving calls regarding  
22 customer complaints (§ 23035(c)(4));
  - 23 e. That the licensee may not accept collateral for a deferred deposit  
24 transaction (§ 23035(c)(5)); and
  - 25 f. That the check is being negotiated as part of a transaction pursuant to §  
26 23035 and is not subject to the provisions of Civil Code section 1719, and  
27 that no customer may be required to pay treble damages if the check does  
28 not clear (§ 23035(c)(6)).

- (5) Failed to post the notices required by Financial Code section 23035, subd. (d):  
there was no notice that the licensee cannot use the criminal process to collect a deferred deposit transaction (§ 23035(d)(1)) and the posted fee schedule did not disclose the charges and fees payable in 14 days and 30 days with corresponding APR (§ 23035(d)(2)). These notices also were not posted on the licensee’s website located at www.paeonline.com.
- (6) Failed to include, in the written agreement, the information required by Financial Code section 23035, subd. (e). The following were missing from the written agreement:
  - a. The address and telephone number of the licensee (§ 23035(e)(3));
  - b. The customer’s address (§ 23035(e)(4));
  - c. An itemization of the amount financed (§ 23035(e)(7));
  - d. Disclosure of any returned check charges (§ 23035(e)(8));
  - e. That the customer cannot be prosecuted or threatened with prosecution to collect (§ 23035(e)(9));
  - f. That the licensee cannot accept collateral for the transaction (§ 23035(e)(10)); and
  - g. That the licensee cannot make a deferred deposit transaction contingent on the purchase of another product or service (§ 23035(e)(11)).
- (7) Issued disclosure statements, or written agreements, to at least eight customers which contained inaccurate APRs in violation of Financial Code section 23035, subd. (e)(1).
- (8) Allowed at least four customers to use the same check to obtain a subsequent loan, in violation of Financial Code section 23037, subd. (a).
- (9) Allowed at least three customers to alter checks without initialing the alteration, in violation of Financial Code section 23037, subd. (e).
- (10) In violation of Financial Code section 23037(f), included in the written

agreement a reference to Civil Code section 1789.35, which, as of December 31, 2004, no longer relates to deferred deposit transactions.

(11) Accepted disclosure statements from at least nine customers that included blanks left to be filled in after execution, in violation of Financial Code section 23037, subd. (h).

(12) Failed to keep evidence of the check, as required by title 10, section 2025, subd. (c)(1) of the California Code of Regulations, in at least four transactions.

Financial Code section 23052 provides, in pertinent part:

The commissioner may suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:

(a) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.

(b) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.

(c) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.

On May 6, 2008, the Commissioner issued his Accusation to Revoke Deferred Deposit Transaction License, Citations and Desist and Refrain Order, and Order Voiding Deferred Deposit Transactions (“Accusation, Citations, and Orders”). The Commissioner also issued a Notice of Intention to Revoke Deferred Deposit Transaction License pursuant to Financial Code section 23052. The Accusation, Citations, and Orders and the Notice of Intention to Revoke Deferred Deposit Transaction License were served on Respondent on May 8, 2008.

On July 2, 2008, Respondent and the Commissioner entered into a settlement agreement whereby Respondent admitted the allegations made against it in the Accusation, Citations, and Orders, for the limited purposes of these proceedings and any future proceeding(s) that may be initiated by or brought before the Commissioner against Respondent. Pursuant to the settlement agreement, Respondent agreed that its CDDTL license would be revoked effective August 1, 2008.



1           THEREFORE, GOOD CAUSE APPEARING, pursuant to California Financial Code section  
2 23052, the deferred deposit transaction originator license issued to Respondent Payday Advance  
3 Express, Inc., is hereby revoked. This Order is effective as of the date hereof.

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10 Dated: August 1, 2008  
11       Los Angeles, California

12                               PRESTON DuFAUCHARD  
13                               California Corporations Commissioner

14                               By: \_\_\_\_\_  
15                                       ALAN S. WEINGER  
16                                       Acting Deputy Commissioner  
17                                       Enforcement Division  
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